IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.257 OF 2007
IN
APPEAL FROM ORDER NO.254 OF 1997

Xavier Joe Gonsalves & Anr. ...Applicants

vs.

Ashley s/o Austin Gonsalves & Ors. ...Respondents

Mr.G.B.Bhatt for the Applicants
Ms Yasmin Tavaria for Respondent Nos.1 and 2
Ms E.A.Gonsalves for Respondent No.3.

CORAM: A.S.OKA,J.
DATE : MARCH 23,2007.

P.C.:

1. Heard Advocates for the parties. This Application for restoration of the Appeal from Order which was dismissed for non removal of the office objections is contested by the Respondents. Perusal of the record of the Appeal shows that compliance was not made with the conditional order dated 20th March 2006 as the Applicant failed to remove office objections. Office objection was as regards the failure to effect proper service of notice to the second Respondent as the second respondent was served by affixing. Office noting shows that Appeal from Order was dismissed for non prosecution as against the first Respondent on 1st March 2000. Therefore, the effect of non compliance with the conditional order dated 20th March 2006 is that the Appeal was dismissed as against the other two Respondents.

2. If an Appeal is dismissed for non removal of the office objections, normally, the litigant i.e. the Appellant cannot be blamed because it is the responsibility of either the Advocate or his Clerk to take steps and the litigant is not expected to go to the office and remove office objections. For this technical default on the part of the Advocate or Advocate's Clerk, the litigant cannot be allowed to suffer.

3. Appeal from Order stands dismissed for non prosecution about a year back. Therefore, though the Appeal deserves to be restored, interim relief, if any operating during the pendency of the Appeal cannot be automatically restored and the Applicant will have to take out a separate application in that behalf so that the concerned Respondents can contest the said Application on the basis of what has transpired after the dismissal of the Appeal.

4. Hence, the Appeal deserves to be restored. As the second respondent is already represented by an Advocate now it is not necessary to serve notice of this Appeal to the second Respondent. It is, however, made clear that the Appeal is not restored as against the Respondent no.1 as by order dated 1st March 2000, the Appeal was dismissed as against the said respondent.

5. Hence, I pass the following order :

i) Appeal from Order No.254 of 1997 is restored as against the second and third Respondents.

ii) As second and third Respondents are now represented by the Advocates, it will not be necessary to issue notice of the Appeal to the said Respondents.

iii) It is made clear that the Appeal from Order is not restored as against the Respondent No.1. It is also made clear that interim relief, if any, operating during the pendency of the Appeal is not restored. Liberty to the Appellant/Applicant to take out appropriate application for interim relief.

iv) Application is accordingly disposed of.

. Place the Appeal from Order on final hearing board on 4th April 2007.

JUDGE